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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE TRANSPACIFIC PASSENGER
AIR TRANSPORTATION
ANTITRUST LITIGATION**

Civil Case No. 3:07-cv-05634-CRB

MDL No. 1913

**This Document Relates To:

ALL ACTIONS**

**PLAINTIFFS' RESPONSE TO MOTION TO
ALLOW CLAIM OF MICHAEL CHEKIAN
(ECF NO. 1334)**

1 **I. INTRODUCTION**

2 Plaintiffs submit this response to the Motion to Allow Claim of Michael Chekian
 3 submitted by Pro Se Claimant Michael F. Chekian (ECF No. 1334) (“Mot.”) along with the
 4 Declaration of Joel K. Botzet of Rust Consulting, Inc. (“Botzet Decl.”) in support hereof.
 5 Plaintiffs and the claims administrator, Rust Consulting, Inc. (“Rust”), have investigated Mr.
 6 Chekian’s assertions. Mr. Chekian alleges that he did not receive an audit letter from Rust and
 7 therefore could not respond with documentation supporting his claims. Without taking a position
 8 on the validity of Mr. Chekian’s claims at this time, Plaintiffs made the following proposal to Mr.
 9 Chekian: In exchange for withdrawing his Motion, Plaintiffs would pay Mr. Chekian’s claims if:
 10 (1) Mr. Chekian explains why his Phase 3 claim included significantly more tickets than his Phase
 11 1 claim; (2) Mr. Chekian provides documentation supporting his claims; (3) Rust determines that
 12 Mr. Chekian’s claims are valid; and (4) there are sufficient funds remaining in the net settlement
 13 funds after the check void date to pay Mr. Chekian’s claims. Plaintiffs requested Mr. Chekian
 14 respond to the proposal by 5 p.m. on April 20, 2022. Plaintiffs have not received any response
 15 from Mr. Chekian as of this filing and conclude that he rejected the proposal.

16 **II. BACKGROUND**

17 **A. The Phase 3 Claim**

18 In his Motion, Mr. Chekian asserts that he filed a claim to the Phase 3 Settlement on July
 19 8, 2019. *See* Mot. at 2. The claim reference number is Y5GQC76S. *Id.* The contact information
 20 associated with this claim is:

21 First and Last Name: Michael Chekian

22 Email: mike@cheklaw.com

23 Phone: (310) 390-5529

24 Address: 445 South Figueroa Street, 31st Floor, Los Angeles, CA 90071

25 *Id.* As part of his Phase 3 claim, Mr. Chekian claimed 346 tickets: 256 Settlement Class III tickets,
 26 32 Japan Fuel Surcharge Settlement Class tickets, and 58 Satogaeri Settlement Class tickets. *Id.*,
 27
 28

1 Declaration of Michael Chekian (“Chekian Decl.”), Ex. A. Rust’s records confirm the foregoing
 2 information. Botzet Decl. ¶¶ 6-7.

3 **B. The Phase 1 Claim**

4 According to Rust’s records, Mr. Chekian also submitted a claim to the Phase 1
 5 Settlements years ago on March 15, 2015. Botzet Decl. ¶¶ 4-5. The claim reference number is
 6 I7B9RTO6. *Id.*, ¶ 4. The contact information associated with this earlier claim is:

7 First and Last Name: Michael Chekian

8 Email: mike@cheklaw.com

9 Phone: (310) 709-2643

10 Address: 11400 W. Olympic Blvd. Ste. 200, Los Angeles, CA 90064

11 *Id.*, ¶ 5. As part of his Phase 1 claim, Mr. Chekian claimed 16 tickets to each of the following
 12 four Settlement Classes for a total of 64 tickets: Air France/Singapore Airlines/Vietnam
 13 Settlement Class, Malaysian Air Settlement Class, ANZ Settlement Class, and PAL Settlement
 14 Class. *Id.* Mr. Chekian does not deny that he submitted a claim to the Phase 1 Settlements in his
 15 Motion. *See, generally*, Mot. He also does not deny that the email, phone, or address associated
 16 with the initial claim are his own. *Id.* Mr. Chekian merely states that he has “no record of
 17 submitting any Phase 1 claim in or around 2015 in this case or of any response by the
 18 Administrator to this alleged Phase 1 claim.” *Id.* at 3.

19 **C. Claims Administration**

20 After the final claim filing deadline of April 1, 2020, Rust consolidated multiple claims
 21 submitted by the same individual to streamline the audit and distribution processes. Botzet Decl.,
 22 ¶ 8. Rust consolidated subsequent claim(s) submitted by the same individual with his or her initial
 23 claim. *Id.* Rust did so by matching the name and at least one piece of contact information
 24 associated with the claims (*e.g.*, email, phone number, or mailing address). *Id.* The contact
 25 information for the initial claim then became the operative contact information for the
 26 consolidated claim of the individual unless the individual notified Rust of a change in contact
 27 information. *Id.*

1 Regarding Mr. Chekian, the name and email on his Phase 3 claim matched the name and
2 email on his Phase 1 claim. *Compare* Chekian Decl., Ex. A, *with* Botzet Decl. ¶ 4. Rust therefore
3 consolidated Mr. Chekian's Phase 3 claim with his Phase 1 claim. *Id.*, ¶ 9. Although the phone
4 and address on his Phase 3 claim did not match with the phone and address on his Phase 1 claim,
5 the email match was sufficient for claim consolidation purposes. *Id.*

6 On September 11, 2020, Rust sent audit letters to individual claimants whose claimed
7 ticket counts exceeded 125 tickets overall and/or 50 Japan Fuel Surcharge Settlement Class tickets
8 and/or 50 Satogaeri Settlement Class tickets. *Id.*, ¶ 10. Mr. Chekian's Phase 3 claim alone
9 exceeded the threshold of 125 tickets overall *and* the Satogaeri Settlement Class threshold of 50
10 tickets. *See, supra*, § II(A). His Phase 3 claim also included significantly more tickets than his
11 Phase 1 claim (346 versus 64 tickets). *See, supra*, § II(A)-(B). Consequently, Rust sent an audit
12 letter (and later, a final determination letter) to Mr. Chekian at 11400 West Olympic Boulevard,
13 Suite 200, Los Angeles, California 90064, the address associated with his consolidated claim.
14 Botzet Decl., ¶¶ 11, 13. The United States Post Office (USPS) did not return either the audit letter
15 or the final determination letter as undeliverable. *Id.*

16 Other than his Phases 1 and 3 claim forms, Rust did not receive any communication from
17 Mr. Chekian until he sent an email inquiring about his Phase 3 claim on March 24, 2022, one
18 week after Plaintiffs and Rust distributed the net settlement funds pursuant to the Court's order
19 (ECF No. 1329). Botzet Decl., ¶ 14. Rust also did not receive any notification from Mr. Chekian
20 regarding his change of address at any point between March 15, 2015 when he filed the Phase 1
21 claim and March 17, 2022 when Plaintiffs and Rust distributed the net settlement funds to class
22 members. *Id.* Furthermore, despite now being aware that he was subject to an audit, and despite
23 Plaintiffs making a reasonable proposal to him, Mr. Chekian has not provided any documentation
24 supporting his Phase 1 or 3 claims to date. *Id.*, ¶¶ 14, 16. Assuming his Phase 1 and 3 claims are
25 valid, however, Rust calculates that Mr. Chekian would be entitled to a payment of around
26 \$46,000. *Id.*, ¶ 16.

D. Status of Settlement Distribution

As discussed in the Notice of Post-Distribution Accounting, Plaintiffs distributed \$104,387,320.59 of the net settlement funds totaling \$104,388,254.38 on March 17, 2022 (ECF No. 1333 at 1).¹ As of April 15, 2022, class members have “cashed” approximately \$90,500,000 through wire transfers or check deposits. Botzet Decl., ¶ 15. About 25,109 checks remain uncashed and have a check void date of June 15, 2022. *Id.* At this point, Plaintiffs cannot recover settlement payments they have already distributed. Assuming Mr. Chekian’s Phase 1 and 3 claims are valid, Plaintiffs also would not have sufficient funds to pay Mr. Chekian if class members cash all \$104,387,320.59 that Plaintiffs distributed. At this time, however, neither Plaintiffs nor Rust can speculate as to whether there will be uncashed checks after the check void date and, if so, the monetary value thereof. *Id.*

III. ARGUMENT

Mr. Chekian argues that the Court should allow his claim and suggests that Plaintiffs failed to meet settlement class notice requirements under Federal Rule of Civil Procedure (“Rule”) 23(c)(2)(B). Mot. at 3-4. Rule 23(c)(2)(B) only requires “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The Court previously found Plaintiffs met Rule 23(c)(2)(B)’s settlement class notice requirements.² Indeed, tens of thousands of class members received notice of the settlements in this action and filed claims, including Mr. Chekian. Any suggestion by Mr. Chekian that Plaintiffs failed to satisfy Rule 23(c)(2)(B)’s settlement class notice requirements, therefore, is meritless.

¹ The amount of the initial distribution was \$104,387,320.59 due to rounding to the nearest cent when calculating the *pro rata* share per qualified claim.

² *See, e.g.,* Second Amended Order Granting Preliminary Approval of Class Action Settlement at 3 (ECF No. 1306) (“The Court finds that the manner of notice proposed constitutes the best practicable notice under the circumstances as well as valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of the Federal Rule of Civil Procedure 23 and the due process requirements of the United States Constitution.”).

1 Mr. Chekian also contends that he received “no notice of the alleged 2016 audit” and “no
2 response to his 2019 Claim.” Mot. at 4. As stated, *supra*, Rust conducted a review and/or audit of
3 all claims and sent audit letters. Botzet Decl., ¶ 10. Rust’s mailing included an audit letter to Mr.
4 Chekian at 11400 West Olympic Boulevard, Suite 200, Los Angeles, California 90064, the
5 address Mr. Chekian listed in his initial claim form. *Id.* Rust never received a response to the audit
6 letter by Mr. Chekian. *Id.*, ¶ 11. Rust then sent final determination letters to all claimants on
7 August 24, 2021. *Id.*, ¶ 12. Rust’s mailing included a final determination letter to Mr. Chekian at
8 the same address. *Id.*, ¶ 13. Rust never received a response to the final determination letter by Mr.
9 Chekian. *Id.* The USPS did not return either the audit letter or the final determination letter as
10 undeliverable to Mr. Chekian at 11400 West Olympic Boulevard, Suite 200, Los Angeles,
11 California 90064. *Id.* Besides the two claim forms, Rust did not receive any communication,
12 including notice of a change of address, from Mr. Chekian between March 15, 2015 when he filed
13 his Phase 1 claim and March 17, 2022 when Plaintiffs distributed the net settlement funds. *Id.*, ¶
14 14. Plaintiffs and Rust have both satisfied their obligations with respect to claims administration.

15 In the interest of resolving this issue and conserving the resources of the parties, their
16 counsel, and the judiciary, Plaintiffs asked Mr. Chekian to withdraw his Motion. *Id.*, ¶ 16. In
17 exchange, Plaintiffs proposed paying his claims if (1) Mr. Chekian explains why his Phase 3 claim
18 included significantly more tickets than his Phase 1 claim (346 tickets v. 64 tickets); (2) Mr.
19 Chekian provides documentation supporting his claims (which he would have had to provide in
20 response to the audit letter to be eligible for a payment); (3) Rust determines that Mr. Chekian’s
21 claims are valid; and (4) there are sufficient funds remaining in the net settlement funds after the
22 check void date of June 15, 2022 to pay Mr. Chekian’s claims. *Id.* Assuming Mr. Chekian’s claims
23 are valid, and assuming there will be uncashed checks after the check void date that equal or
24 exceed the monetary value of Mr. Chekian’s claims, Plaintiffs would pay Mr. Chekian from the
25 remaining net settlement funds. If his claims are invalid and/or there are insufficient uncashed
26 checks after the check void to pay Mr. Chekian, Plaintiffs would simply not be able to pay him.
27 The proposal represented a fair and reasonable resolution, though Plaintiffs never received a
28

response from Mr. Chekian by 5 p.m. on April 20, 2022 as requested or any response for that matter. *Id.*

IV. CONCLUSION

Plaintiffs respectfully request that the Court deny Mr. Chekian's Motion because he failed to provide a response to the audit letter and, more specifically, any documentation supporting his claims to date.

Dated: April 22, 2022

Respectfully submitted,

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